BESHARAPAN SDN BHD & ORS

v.

AGROCO PLANTATION SDN BHD & ANOR

COURT OF APPEAL, PUTRAJAYA
ABDUL KADIR SULAIMAN JCA
ARIFIN ZAKARIA JCA
TENGKU BAHARUDIN SHAH JCA
[CIVIL APPEAL NO: S-02-605-1998]
31 OCTOBER 2006

LAND LAW: *Indefeasibility of title and interests - Non-registration - Effect of - Whether non-registration of title rendered sale and purchase agreement void or invalid - Land Ordinance (Cap 68) (Sabah), s. 88*

BANKRUPTCY: *Dealings in property by bankrupt - Land - Undischarged bankrupt disposing property during bankruptcy - Whether s. 24(4) Bankruptcy Act 1967 applicable - Whether non-intervention by Official Assignee rendered bankrupt's interest in land unaffected by his bankruptcy - Land Ordinance (Cap 68) (Sabah), s. 88*

CONTRACT: *Sale and purchase of land - Whether payment made - Terms of agreement - Whether notice for non-payment of balance of purchase price issued by vendors to purchaser - Whether finding of fact by trial judge pertaining to evidence of parties involved ought to be interfered with*

The 2nd and 3rd appellants, on 1 February 1989, entered into a sale and purchase agreement with the 2nd respondent ('1989 Agreement') in respect of a certain piece of land ('subject land'). On the same date, the 2nd and 3rd appellants also executed a Power of Attorney thereby appointing the 2nd respondent as their attorney, and pursuant to this, the 2nd respondent signed the draft title of the subject land. On 15 January 1993, the 2nd respondent sold the subject land to the 1st respondent *vide* a sale and purchase agreement ('1993 Agreement') and also executed a substitution under a Power of Attorney in favour of the 1st respondent. Upon issuance of the issued document of title of the subject land, the 1st respondent took possession of it. Subsequently, the respondents applied to the High Court by way of originating summons seeking, among others, a declaration that the 1st respondent was, by virtue the 1993 Agreement, entitled to register its name on the title deed. The appellants in their

counterclaim sought, *inter alia*, the declarations that the 2nd respondent did not have the power to enter into the 1993 Agreement, and that a subsequent sale and purchase agreement between the 2nd and 3rd appellants and the 1st appellant was valid and enforceable. The appellants also prayed for other consequential reliefs. The respondents' application was allowed and the learned judge dismissed the reliefs sought by the appellants.

The appellants appealed, contending that the 1989 Agreement was invalid and void on three main grounds. Firstly, that on the date of execution of the 1989 Agreement and the impugned Power of Attorney, the subject land was yet to be registered in the name of the 2nd and 3rd appellants. Based on s. 88 of the Land Ordinance (Cap 68) (Sabah) ('Ordinance'), the appellants claimed that they did not have any right or interest over the subject land that was capable of being disposed to the 1st respondent. Secondly, the 2nd appellant was an undischarged bankrupt at the material time and as such had no legal capacity to sell the subject land. This was so because under the Bankruptcy Act 1967 ('Act') all his property, including the subject land, vests on the Official Assignee ('OA') upon the 2nd appellant being adjudged a bankrupt. As such, only the OA had the capacity to enter into the agreement for the benefit of the creditors. Thirdly, the non-payment by the 2nd respondent of the subject land's purchase price as agreed upon in the 1989 Agreement.

Held (dismissing the appeal)
Per Arifin Zakaria JCA:

(1) Even though the 2nd and 3rd appellants did not have any registered right or interest in the subject land on the date of execution of the 1989 Agreement, that did not render the agreement, which was otherwise valid and enforceable, to be void or invalid. The 2nd and 3rd appellants at the material time had sufficient interest in the subject land to enter into a binding agreement, by which they agreed to transfer the subject land when the title or interest in the subject land had been registered in their names. In other words, the parties agreed that the agreement would only become enforceable the moment the 2nd and 3rd appellants' right or interest in the

subject land was registered under the Ordinance. There was no difficulty with such an arrangement and, thus, there was no merit in the first ground canvassed by the appellants. (para 6)

(2) Section 24(4) of the Act had no application in the present case as the subject land at the material time could not qualify as property that was capable of being divisible among the creditors of the 2nd appellant, for it had not been registered in the name of the 2nd appellant. Furthermore, no premium had been paid in respect of the subject land and it was, for all intents and purposes, still state land. Under s. 88 of the Ordinance, no title to land shall be valid until it is registered in accordance with Part V of the Ordinance. And since in this case the OA had not taken steps to intervene or to register his interest in the subject land under the Ordinance, the 2nd appellant's right or interest in the subject land was not in any manner affected by his bankruptcy. (paras 9, 10 & 11)

(3) Under the terms of the 1989 Agreement, it was incumbent on the purchaser to pay the balance of the purchase price within 60 days from the date of the signing of the agreement. The proviso to the agreement set out what needed to be done by the vendors should the purchaser fail to pay up within the stated time, that was, to give the purchaser two weeks written notice. In the event the purchaser failed to comply with the notice, the vendors were entitled to cancel the agreement. There was no evidence that such a notice had ever been issued by the appellants and PW3, the solicitor who attended to the agreement, gave evidence that he never received any complaint from the appellants that the purchase price for the subject land had not been paid. In the circumstances, there was ample evidence to support the finding of the learned trial judge that, on the balance, the evidence of the 2nd respondent was to be preferred to that of the appellants. In any case, this was a finding of fact which an appellate court would normally be most reluctant to interfere with, unless the finding was so perverse and not supported by the evidence before the court. (para 16)

A ***Bahasa Malaysia*** *translation of headnotes*

Pada 1 Februari 1989, perayu kedua dan ketiga telah memeterai satu perjanjian jual beli sebidang tanah ('tanah tersebut') dengan responden kedua. Pada tarikh yang sama, perayu kedua dan ketiga
B juga memeterai satu Surat Kuasa Wakil melantik responden kedua sebagai wakil mereka, dan berikutnya, responden kedua menandatangani deraf hakmilik tanah tersebut. Pada 15 Januari 1993, responden kedua menjual tanah tersebut kepada responden pertama melalui satu perjanjian jual beli ('Perjanjian 1993') dan
C kemudian memeterai pengambil-alihan di bawah Surat Kuasa Wakil bagi manfaat responden pertama. Apabila dokumen hakmilik tanah tersebut dikeluarkan, responden pertama terus mengambil milikan tanah tersebut. Berikutnya, responden-responden memohon ke Mahkamah Tinggi melalui saman pemula, antara lain untuk
D mendapatkan perisytiharan bahawa responden pertama, berdasarkan Perjanjian 1993, berhak mendaftarkan namanya pada suratikatan hakmilik. Melalui tuntutan balas mereka, perayu-perayu menuntut perisytiharan bahawa responden kedua tidak mempunyai kuasa untuk memeterai Perjanjian 1993, dan bahawa perjanjian jual
E beli yang dibuat kemudian di antara perayu-perayu kedua dan ketiga dengan perayu pertama adalah sah dan boleh dikuatkuasakan. Perayu-perayu juga memohon relif-relif konsekuental yang lain. Permohonan responden-responden telah dibenarkan sementara relif-relif yang dipohon perayu-perayu ditolak oleh yang arif hakim.

F Perayu-perayu merayu dengan berhujah bahawa Perjanjian 1989 adalah tak sah dan batal atas tiga alasan. Pertama, bahawa pada tarikh Perjanjian 1989 dan Surat Kuasa Wakil yang dicabar ditandatangani, tanah tersebut masih belum didaftarkan atas nama
G perayu kedua dan ketiga. Berdasarkan kepada s. 88 Ordinan Tanah (Sabah) (Cap 68) ('Ordinan'), perayu-perayu berkata bahawa mereka tidak mempunyai apa-apa hak atau kepentingan atas tanah tersebut yang boleh diserahkan kepada responden pertama. Kedua, perayu kedua adalah seorang bankrap yang belum
H dilepaskan pada waktu material dan oleh itu tidak mempunyai kapasiti undang-undang untuk menjual tanah tersebut. Ini kerana, di bawah Akta Kebankrapan 1967 ('Akta') kesemua hartanya, termasuk tanah tersebut, terletakhak atas Pegawai Penerima ('OA') sewaktu perayu kedua diisytiharkan bankrap. Ini bermakna, hanya
I OA yang mempunyai kapasiti untuk memeterai perjanjian bagi manfaat pemiutang-pemiutang. Ketiga, kegagalan responden kedua membayar harga belian tanah tersebut seperti yang dipersetujui di dalam Perjanjian 1989.

Diputuskan (menolak rayuan)
Arifin Zakaria HMR:

(1) Walaupun perayu-perayu kedua dan ketiga tidak mempunyai apa-apa hak atau kepentingan berdaftar dalam tanah tersebut sewaktu pemeteraian Perjanjian 1989, itu tidak menjadikan perjanjian, yang memangnya sah dan boleh dikuatkuasakan, sebagai tak sah dan batal. Perayu-perayu kedua dan ketiga pada waktu material mempunyai kepentingan yang mencukupi dalam tanah tersebut untuk memeterai perjanjian yang mengikat, dengan mana mereka menyetujui untuk memindahkan tanah tersebut apabila hakmilik atau kepentingan pada tanah tersebut didaftarkan atas nama mereka. Dengan lain perkataan, pihak-pihak bersetuju bahawa perjanjian akan hanya berkuatkuasa apabila hak-hak atau kepentingan perayu-perayu kedua dan ketiga dalam tanah tersebut didaftarkan di bawah Ordinan. Tiada maasalah dengan perjanjian yang sedemikian, dan dengan itu, alasan pertama yang ditonjolkan oleh perayu-perayu adalah tidak bermerit.

(2) Seksyen 24(4) Akta tidak terpakai kepada kes semasa kerana tanah tersebut, pada waktu material, tidak layak menjadi hartanah yang boleh dipecahbahagi di antara pemiutang-pemiutang perayu kedua, disebabkan ia tidak didaftarkan atas nama perayu kedua. Selain itu, tiada premium telah dibayar untuk tanah tersebut, dan ianya, untuk semua maksud, masih lagi tanah kerajaan. Di bawah s. 88 Ordinan, tiada hakmilik tanah menjadi sah sehinggalah ianya didaftarkan menurut Bahagian V Ordinan. Dan, oleh kerana dalam kes ini OA belum mengambil sebarang langkah untuk campur tangan ataupun mendaftarkan kepentingannya dalam tanah tersebut di bawah Ordinan, hak atau kepentingan perayu kedua dalam tanah tersebut sama sekali tidak terjejas oleh kebankrapannya.

(3) Di bawah terma-terma Perjanjian 1989, pembeli hendaklah membayar baki harga belian dalam tempoh 60 hari dari tarikh perjanjian ditandatangani. Disamping itu, proviso kepada perjanjian menyenaraikan apa yang perlu dibuat oleh penjual-penjual jika pembeli gagal membayar dalam masa yang ditetapkan, iaitu dengan memberi pembeli dua minggu notis bertulis. Sekiranya pembeli gagal mematuhi notis, maka penjual-penjual berhak membatalkan perjanjian. Tiada keterangan bahawa notis sedemikian pernah dikeluarkan oleh perayu-

perayu, dan PW3, peguamcara yang menyediakan perjanjian, memberi keterangan bahawa beliau tidak pernah menerima sebarang bantahan dari perayu-perayu bahawa harga belian tanah tersebut telah tidak dibayar. Dalam keadaan sedemikian, terdapat keterangan yang mencukupi untuk menyokong dapatan yang arif hakim bicara bahawa, atas imbangan, keterangan responden kedua adalah lebih dapat diterima berbanding keterangan perayu-perayu. Apapun, ini adalah dapatan fakta yang mana mahkamah rayuan tidak cenderung untuk campur tangan, kecuali ianya sesuatu yang sangat bertentangan dan tidak disokong oleh keterangan yang ada di hadapan mahkamah.

Case(s) referred to:

Borneo Housing Mortgage Finance Bhd v. Time Engineering Bhd [1996] 2 CLJ 561 FC ***(foll)***

Hussaina Rani Naina Mohamed v. Ahmad Nazri Kamaruddin & Anor [1997] 3 CLJ 500 CA ***(refd)***

Leong Huat Sawmill (Pte) v. Lee Man See [1984] 2 CLJ 157; [1984] 1 CLJ (Rep) 202 FC ***(refd)***

Re Chua Tin Hong; ex p Castrol (M) Sdn Bhd [1997] 3 CLJ Supp 174 HC ***(foll)***

Legislation referred to:

Bankruptcy Act 1967, s. 24(4)
Land Ordinance (Cap 68) (Sabah), s. 88

For the appellant - Hamid Ismail; M/s Sugumar & Co
For the respondent - Liew Ting Ting; M/s Chin Lau Wong & Foo

[Appeal from High Court, Sandakan; Originating Summons No: S(24) 39-1995]

Reported by Suresh Nathan

JUDGMENT

Arifin Zakaria JCA:

[1] The subject matter of the dispute in this case is a piece of land measuring 997 acres bearing title deed CL 085311075, situated at Sungai Ruku-Ruku, Labuk/Sugut, Sabah (the subject land). The learned judge had meticulously set out the relevant facts in his judgment which for convenience are reproduced below:

One set of chronology of events which are not in dispute are as follows:

(a) On 01/02/1989 the 2nd and 3rd Defendants entered into a Sale and Purchase Agreement with the 2nd Plaintiff in respect of the subject land with a consideration of RM100,000.00;

(b) On 01/02/1989 the 2nd and 3rd Defendants also executed a Power of Attorney thereby appointing the 2nd Plaintiff as their attorney;

(c) A supplementary Agreement was also entered into between the 2nd and 3rd Defendants and the 2nd Plaintiff on 06/03/1989;

(d) Pursuant to his appointment as the attorney for the 2nd and 3rd Defendants, the 2nd Plaintiff signed the draft title of the subject land on 14/08/1989;

(e) On 15/01/1993 the 2nd Plaintiff sold the subject land to the 1st Plaintiffs *vide* a Sale and Purchase Agreement on even date at the price of RM185,630.00;

(f) And on the same date, ie, 15/01/1993 the 2nd Plaintiff executed a Substitution under a Power of Attorney in favour of the 1st Plaintiffs;

(the foregoing transactions are hereinafter collectively referred to as "the transactions");

(g) Upon payment of the premium to the relevant authority the title deed for the subject land was issued and registered on 16/09/1994;

(h) Upon issuance of the issued document of title the 1st Plaintiffs took possession of it; and

(i) On 15/05/1997 the 1st Plaintiffs finally managed to transfer the subject land to their name, having earlier on being impeded by the presence of caveat lodged by the 1st Defendants against the title of the subject land. It is also pertinent to note that the 1st Plaintiffs as the substitute attorney for the 2nd and 3rd Defendants signed the Memorandum of Transfer for the transferors.

The other set of events are as follows in chronological order:

(i) On 04/10/1978 a Receiving Order and an Adjudication Order were issued upon the 2nd Defendant;

(ii) But on 21/07/1993 both the Receiving Adjudication Orders were rescinded and annulled; and

(iii) On 23/08/1995 the 2nd and 3rd Defendants entered into a Sale and Purchase Agreement with the 1st Defendants for the sale of the subject land to the latter.

It is also not in issue that on 28/01/1995 amendments were effected on the title deed of the subject land and thereby allowing the planting of oil palm on the subject land instead of rubber and also to bring it under 75% cultivation by January 1993.

[2] Arising from the above facts the respondents applied to the High Court by way of originating summons seeking among others a declaration that 1st respondent, is by virtue of the sale and purchase agreement dated 15 January 1993 between 1st respondent and the 2nd respondent, entitled to register their name on the title deed of the subject land. The originating summons was converted to a writ action and the parties then filed their respective pleadings. The appellants in their counter claim sought, *inter alia*, the declarations that:

(1) the 2nd respondent did not have the power under the Power of Attorney dated 1 February 1989 to enter into the sale and purchase agreement dated 15 January 1993 with the 1st respondent; and

(2) a declaration that the sale and purchase agreement between the 2nd and 3rd appellants on the one part and the 1st appellant on the other part is valid and subsisting and enforceable.

[3] The appellants also prayed for other consequential reliefs. The respondents' application was allowed and hence the reliefs sought for by the appellants naturally were dismissed by the learned judge. We had earlier dismissed this appeal and we now give our reasons for the same.

[4] The main thrust of the appeal is that the sale and purchase agreement dated 1 February 1989 (the 1989 Agreement) between the 2nd and 3rd appellants on the one part and the respondents on the other part was invalid and void on three main grounds. Firstly, it is the contention of the appellants that on the date of execution of the 1989 Agreement and the impugned Power of Attorney the subject land was yet to be registered in the name of 2nd and 3rd appellants. Based on s. 88 of Sabah Land Ordinance

(the Ordinance) the appellants claim that at the material time the 2nd and 3rd appellants did not have any right or interest over the subject land which is capable of being disposed by to 1st respondent. Section 88 of the Ordinance reads:

> No new title and no dealing with, claim to or interest in any land except land still held under native customary tenure without documentary title shall be valid until it has been registered in accordance with the provisions of this Part.

[5] This section came for consideration of the Federal Court in *Borneo Housing Mortgage Finance Bhd. v. Time Engineering Bhd.* [1996] 2 CLJ 561. Edgar Joseph Jr FCJ delivering the judgment of the court, after considering s. 88 of the Ordinance stated at pp. 576-577:

> Part V of the Land Ordinance provides for a modified Torrens system of land registration in Sabah and this section corresponds to the provision necessary in this system to ensure that no title to interests in land shall pass until the dealing has been registered. The language employed is somewhat different from that used in the majority of systems in use in the Commonwealth. The usual provision is to the effect that no instrument shall be effectual to pass any interest in land without registration and that, upon registration, the interest shall pass. See s. 27 of the Land Titles Ordinance 1956 of Singapore for an illustration, and also the reference to the number of jurisdictions in which this provision exists set out in p 116 of Hogg's Registration of Title to Land Throughout the Empire. In nearly all jurisdictions, however, notwithstanding variations in the language used, it has been held that these provisions do not render unenforceable contracts or agreements which would lead up to the execution and registration of instruments. Even the unregistered instrument itself may give a title in equity and an equitable right to enforce the agreement which must have existed between the parties when the instrument was executed. See *Abigail v. Lapin* [1934] AC 491. Section 4 of the Selangor Registration of Titles Regulation 1891 employed what is probably the most sweeping language used in these provisions. That section provided that land comprised in a grant shall not be capable of being dealt with except in accordance with the statutory provisions and that 'any attempt' to deal with land except in this manner 'shall be null and void and of none effect'. Nevertheless, in *Haji Abdul Rahman v. Mohamed Hassan* [1971] AC 209; 1 FMSLR 290, the Judicial Committee of the Privy Council held that an agreement, not in registrable form, to transfer back certain land upon a certain contingency happening, while 'valueless as a

transfer or burdening instrument' (at p 215) was good as a contract. It was said that it was not an 'attempt to transfer, but a conditional promise to transfer' (at p 214).

The language of s. 88 is not nearly as sweeping as that of the Selangor provision. Moreover, its effect is confined to a new title or a dealing with, claim to, or interest in land. Following the foregoing authorities, and others too numerous to mention, in my judgment s. 88 does not affect contracts or agreements otherwise valid and enforceable. As was pointed out in *Abigail*'s case (at p 500), the provision for protection of unregistered interests by caveats shows that the legislation does not attempt to render all unregistered interests non-existent. What it does, is to prohibit the acquisition of a legal estate or interest in land except by registration of an instrument in the statutory form. Section 116 of the Land Ordinance of Sabah makes the usual provision for caveats which may be registered 'by any person claiming to be entitled to any interest' in any land. Obviously, such a provision is inconsistent with any interpretation of s. 88 which involves holding that any agreements or other documents affecting land are of no effect and that only registration of the dealing in the land is to have legal validity at all.

For these reasons, I hold that s. 88, notwistanding the variation in language from that used in most jurisdictions, does not render this agreement for a lease invalid or unforceable.

[6] On the above authority it is our view that even though on the date of execution of the 1989 Agreement the 2nd and 3rd appellants did not have any registered right or interest in the subject land that does not render the agreement which is otherwise valid and enforceable to be void or invalid. We hold that 2nd and 3rd appellants at the material time have sufficient interest in the subject land to enter into a binding agreement by which they agreed to transfer the subject land when the title or interest in the subject has been registered in their names. In other words the parties agreed that the agreement will only become enforceable the moment the 2nd and 3rd appellants' right or interest in the subject land is registered under the Ordinance. We find no difficulty with such an arrangement. For the above reasons we find no merit in the first ground canvassed before us by the appellants.

[7] The second ground was that at the material time the 2nd appellant was an undischarged bankrupt and as such the 2nd appellant had no legal capacity to sell the subject land. This is so because under the Bankruptcy Act 1967 (the Act) all his property,

including the subject land, vests on the official assignee (OA) upon him being adjudged a bankrupt on 14 October 1978. And as such only the OA has the capacity to enter into the agreement for the benefit of the creditors.

[8] In support of his argument learned counsel for the appellants relied on s. 24(4) of the Act which reads:

24. Adjudication of Bankruptcy

(4) When a debtor is adjudge bankrupt his property shall become divisible among his creditors and shall vest in the Official Assignee.

[9] Having considered the grounds relied upon by the learned judge we agree with the reasons advanced therein. Like the learned judge we are of the view that s. 24(4) has no application in the present case as the subject land at the material time could not qualify as property that is capable of being divisible among the creditors of the 2nd appellant. For it had not been registered in the name of the 2nd appellant. Furthermore no premium had been paid in respect of the subject land. In our view it was for all intents and purposes still state land. Under s. 88 of the Ordinance, cited earlier, no title to land shall be valid until it is registered in accordance with part V of the Ordinance.

[10] Further s. 24(4) of the Act has to be read subject to the Land Ordinance, the law governing the property in question. In *Re Chua Tin Hong; ex p Castrol (M) Sdn Bhd* [1997] 3 CLJ Supp 174 Augustine Paul JC (as he the was) had correctly stated the position where he observed that:

> s. 24(4) of the Bankruptcy Act 1967 must be interpreted as being qualified by s. 349 of the Code (National Land Code) as far as land is concerned. As s. 24(4) of the Act is subjected to the specific requirements of s. 349 of the Code it follows that the title to or interest in property of the Official Assignee which consists of land will vest and divest only on registration and if the Bankrupt had transferred his interest in land to some person who had registered the transfer before any transmission was registered by the Official Assignee then the bankrupt's interest would, notwithstanding his bankruptcy, have passed to such person (see *Messiter v. Wollerman & Freeman* [1970] 27 NZLR 589.

[11] In this case the OA had not taken step to intervene or to register his interest in the subject land under the Ordinance. In the circumstances we hold that the 2nd appellant's right or interest in the subject land is not in any manner affected by his bankruptcy.

[12] The other issue raised before us is the non payment of the purchase price as agreed in the 1989 Agreement. In his submission learned counsel for the appellants drew our attention to the evidence of 2nd respondent with regard to the same. He said during the trial the 2nd respondent gave evidence that he had in his possession payment vouchers to prove that the purchase price had been paid. However he said these vouchers were never produced or admitted in evidence. In the circumstances, the court ought to have drawn an adverse inference against the respondents for failure to produce the vouchers.

[13] The learned judge in his judgment dealt with this point both on the evidence and on the pleading and came to his finding that there is no merit in the appellants' contention. In his judgment he stated:

> And in any event the 2nd Plaintiff (PW1) on one hand gave evidence that he had paid the purchase price. He attempted to show the payment vouchers in Court. On the other hand the 3rd Defendant (DW4) denied receiving any payment. He also took the position that the sale was only the timber in the subject land.
>
> Having considered these two diametrically opposite testimonies I am inclined to believe PW1. I find it difficult to accept the evidence of DW4 as he seemed to deny knowing even the contents of the Sale and Purchase Agreement dated 01/02/89. At the same time he said that he could only read Jawi. However, it is pertinent to note that when DW4 came to sign the documents in the office of PW3 the 2nd Defendant was with him. And there was no allegation that the 2nd Defendant was equally illiterate. Incidentally, the averment as to what was the subject of the transaction as between the 2nd Plaintiff and the 2nd and 3rd Defendants was not pursued. In fact the allegation of fraudulent misrepresentation was abandoned.

> I am also inclined to agree with the learned counsel for the Plaintiffs that the issue of non-payment of the purchase price was not pleaded by the Defendants in their defence. And litigants are bound by their pleadings. (See: *State Government of Perak v. Muniandy* [1986] 1 MLJ 490; *Grimstern Corporation (M) Sdn. Bhd. & Anor. v. Global Insurance Co. Sdn. Bhd.* [1987] 1 MLJ 302 SC). On this score as well that I am unable to accept the argument of the Defendants on this Issue.

[14] And he went to hold that there was no merit in the contention of the appellants.

[15] On this issue it is necessary to go back to the terms of the 1989 Agreement. Clause 1 thereof stipulates as follows:

> In consideration of the terms and conditions hereinafter mentioned, the Vendors agree to sell and the Purchaser agree to buy the said land at the purchase price of Malaysian Ringgit: One Hundred Thousand (M$100,000.00) only.
>
> The said purchase price shall be paid as follows:
>
> (a) Malaysian Ringgit Two Thousand (M$2,000.00) only on the signing of this Agreement;
>
> (b) The final balance of Malaysian Ringgit Ninety Eight Thousand (M$98,000.00) only within sixty (60) days from the date of signing this Agreement.
>
> Provided that if the Purchaser fail to pay the payment mentioned under Clause 2(b) on the due date, the Vendors shall give two (2) weeks' written notice to the Purchaser to pay the same and should the Purchaser fail to pay after the expiry of the said notice, the Vendors shall be entitled to cancel this Agreement and forfeit whatever payments made by the Purchaser under this Agreement.

[16] Under the said clause it is thus incumbent on the purchaser to pay the balance of purchase price within 60 days from the date of the signing of the agreement. The proviso to the agreement sets out what need to be done by the vendors should the purchaser fail to pay up within the stated time, that is, to give the purchaser two weeks written notice. In the event the purchaser fail to comply with the notice then the vendors are entitled to cancel the agreement. There is no evidence that such a notice had ever been issued by the appellants. PW3, the solicitor who attended to the agreement gave evidence that he never received any complaint from the appellants that the purchase price

for the subject land had not been paid. In the circumstances, we find there is ample evidence to support the finding of the learned trial judge that, on the balance, the evidence of the 2nd respondent is to be preferred to that of the appellants. In any case this is a finding of fact which the appellate court would normally be most reluctant to interfere unless the finding is perverse and not supported by the evidence before the court. (see *Leong Huat Sawmill (Pte) v Lee Man See* [1984] 2 CLJ 157; [1984] 1 CLJ (Rep) 202; *Hussaina Rani i/k Naina Mohamed (suing as widow of Naina Mohamed, deceased v Ahmad Nazri Kamaruddin & Anor* [1997] 3 CLJ 500.

[17] For the above reasons we dismissed the appeal herein with costs and further ordered that the deposit be paid to the respondents to account of costs.